

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.02.2020

ORDERS PRONOUNCED ON : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.NO.31075 OF 2019
AND
W.M.P.NOS.31193, 31195 AND 31197 OF 2019

B.Jeyanthi

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Greater Chennai,
Ripon Buildings,
Chennai-600 002.

2. The Assistant Engineer,
Division 30, Zone-III,
Corporation of Greater Chennai,
Madhavaram, Chennai-600 060.

3. Munisamy

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the building permit bearing B.A./WDCN03/0102/2019, dated 26.02.2019 on the file of the first respondent and quash the same as illegal and without jurisdiction.

For petitioner : Mr.Govind Chandrasekhar

For respondents : Mrs.Karthika Ashok for RR-1 & 2
Mr.M.R.Jothimanian for Mr.K.Balu for R-3

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the building permit bearing B.A./WDCN03/0102/2019, dated 26.02.2019

on the file of the first respondent and quash the same as illegal and without jurisdiction.

2. The petitioner herein is a resident of No.96, Rajaji Street, Madhavaram, Chennai. The third respondent is the owner of the premises at Door No.117/77, Perumal Kovil Street, Madhavaram, Chennai. The third respondent had illegally commenced construction in the said premises without obtaining any planning approval from the authorities. The third respondent, without any regard for law, had put up the foundation and ground floor by December 2018. The petitioner obtained a response through the Right to Information Act from the Executive Engineer, Zone-3, Corporation of Chennai on 28.12.2018 stating that the construction was being carried out without any planning permission. Hence, the petitioner wrote to the authorities on 07.01.2019 to initiate action. Thereafter, the third respondent had moved the first respondent by fraudulently making out an application for permission to demolish the existing structure and for re-construction of the ground floor. The application for planning permission appears to have been made on 07.02.2019. But within a span of three weeks, i.e. by 26.02.2019, the first respondent appears to have granted the permit. In fact, on 07.02.2019, when the application appears to have been made, there was no existing old structure in the premises requiring demolition. But the third respondent had committed a deliberate fraud by misleading the authorities that there was an existing structure on that date in the premises.

3. The petitioner was not aware of the fact that the authorities had illegally granted ex-post facto approval to the third respondent. Hence, the petitioner filed W.P.No.14494 of 2019 before this Court for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to take action on her representation, dated 07.01.2019 to demolish the building constructed by the third respondent situated at Door No.117/77, Rajaji Street, Madhavaram, Chennai-600 060 and remove the encroachment made on 8 feet connectivity road of Rajaji Street. The Corporation of Chennai stated that based on the RTI application dated 28.12.2018 sent by the petitioner, the site had been inspected and work has been stopped by the concerned Assistant Engineer and thereafter, verifying the office records, there was no planning permission accorded to the third respondent and thereafter, the third respondent stopped work and applied for planning permission construction of his property. The Division Bench, in its order dated 25.09.2019, had observed based on the affidavit filed by the Corporation of Chennai that as per the said affidavit, the approval of the construction of building by the third respondent was granted by the concerned authority on 26.02.2019, albeit, the construction has started prior to that. Therefore, an ex-post-facto approval had been

given.

4. It is the further case of the petitioner that neither the Corporation of Chennai, nor the CMDA, nor the Government of Tamil Nadu, has any power to grant ex-post-facto planning permission to any structure. A structure constructed without planning approval is unauthorised and illegal. An unauthorised structure cannot be regularised. The authorities in this case, had committed manifest illegality and have deliberately colluded with the third respondent and entertained the application for the planning permit as though an old structure existed on 26.02.2019 and that the same was sought to be demolished and re-constructed. The grant of ex-post-facto approval is unknown to law. Hence, the present Writ Petition is filed by the petitioner for the relief stated supra.

5. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner made submissions adverting to the averments made in the affidavit filed in support of the Writ Petitions. The learned counsel for the petitioner submitted that the practice of regularisation of illegal constructions by the authorities should be refrained as observed by the Courts while exercising equitable jurisdiction of regularisation of illegal and unauthorised constructions, else, it would encourage the violators of the building laws and destroy the very idea of the planning development of urban areas and that the unauthorised construction or deviations made after the commencement of the Amended Act of 1998 (of the Tamil Nadu Town and Country Planning Act, 1971) cannot be regularised/rectified. Thus, the learned counsel submitted that the ex-post-facto approval granted in this case is illegal and therefore, the impugned order is liable to be quashed. In support of his submissions, he relied on the following judgments:

(i) 1974 (2) SCC 506 (K.Ramadas Shenoy Vs. Chief Officers, Town Municipal Council);

(ii) 2016 SCC Online Madras 24868 (Madras High Court) (P.Vijil Raj Vs. The District Collector, Madurai District and another), and

(iii) 2005 (1) CTC 385 (Madras High Court) (Salahudeen Babu Vs. P.T.Prabhakar).

6. Countering the above submissions, the learned counsel appearing for the respondents 1 and 2, by filing counter affidavit, submitted that on receipt of the petition under the Right to Information Act, the building at No.117, Perumal Koil Street, Madhavaram, Chennai-600 060 was inspected and it was found that the third respondent had commenced the construction

activity without planning permission. Immediately, the officials of Greater Chennai Corporation had warned the third respondent and one Mr.B.Mahalingam not to continue the construction activity before getting approval from the competent authority, failing which further action will be taken as per the provisions of the Tami Nadu Town and Country Planning Act, 1971. The third respondent and Mr.B.Mahalingam had stopped the construction activity pleading innocence and had applied for planning permission to the Greater Chennai Corporation along with mandatory documents. After scrutinising the same and based on the inspection conducted earlier, the planning permission was accorded to the third respondent, vide PPA/WDCN03/01065/2019 and building approval, vide BA/WDCN03/0102/2019, dated 26.02.2019 and the third respondent had commenced the construction activity thereafter. In such a situation, the petitioner filed W.P.No.14494 of 2019 (as stated above), in which the respondent-Corporation of Chennai had filed affidavit, and the said W.P. was disposed of on 25.09.2019 (as stated above) observing as follows:

"3. As per the said affidavit, the approval for construction of building by respondent no.3 was granted by the concerned authority on 26.02.2019, albeit, the construction has started prior to that. Therefore, an ex post facto approval has been given. Upon sending a letter dated 23.05.2019 in respect of encroachment in the common passage to the concerned authorities, the concerned Tahsildar, Madhavaram Taluk, vide his report dated 30.05.2019, stated, as in para 10 of the affidavit quoted above, that there is no encroachment of the common passage in the said case.

4. In view of these facts, we are satisfied that the grievance as stated in the present writ petition is not tenable. In case, the petitioner has any valid objection in this regard, she may either approach the Local Planning Authority in question or the higher authority, in accordance with law."

7. The learned counsel for the respondents 1 and 2/Corporation of Chennai also submitted that without availing of the said liberty granted by the Division Bench in the said Writ Petition, the petitioner has filed the present Writ Petition. It is further stated in the present counter affidavit that the ex-

post-facto / retrospective approval had been given to the completed building, and therefore, it can no longer be treated as an unauthorised construction. The Division Bench had not found the ex-post-facto approval illegal. The construction work was in the initial stage and as evidenced from the photograph and the affidavit of the petitioner, the building was in the basement stage when the RTI was requested by the petitioner and in the further course, as per Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971, the further construction was stopped. Thereafter, on application and check list report, dated 25.01.2019, the planning permission dated 26.02.2019 was given to the third respondent. The building in question was inspected on 05.11.2019 and 18.11.2019 and it was found that there is no violation in the approval sanctioned and the work was in progress. As was given liberty by the Court, the petitioner had not addressed her valid objections as alleged before the authorities with regard to the constructions and approval, but had rushed to this Court. It is useful further to extract paragraph 10 of the counter affidavit of the respondents 1 and 2 filed in the present Writ Petition, as relied on by the learned counsel:

"10. It is submitted that the Corporation will not join or collude for any act of fraud with non-application of mind. The approval sanctioned for the building of the 3rd respondent is as per the law. With regard to the ex-post facto approval it is submitted that in our pure and clear understanding of the Town and Country Planning Act, 1971 and the prevailing practice, for the building under construction, on initial stage the approval could be granted and in support of the same, Section 56 & 57 of the Town and Country Planning Act, 1971, contemplates removal of the building constructed subsequent to the action initiated under the Act only and which does not bar the consideration or sanctioning of the approval during the stoppage of the work. Hence, the act of sanctioning approval to the construction of the 3rd respondent building is justifiable. And if at all there is any violations found, the petitioner can approach this Respondent by a complaint."

8. The learned counsel for the respondents 1 and 2 further contended that to the knowledge of the respondents 1 and 2, it was found out from the enquiry at the time of inspection that

the petitioner has personal and ill-motive and had approached this Court with personal vengeance on the third respondent and one Mr.B.Mahalingam. Earlier, in some dispute between the petitioner's family and the third respondent's family, there had been a quarrel and fight for the two, where the petitioner's son had been arrayed as an accused in the criminal case, which made the petitioner to go aggressive against the third respondent and the said B.Mahalingam. Further, the petitioner's residential house at No.96, Rajaji Cross Street, Madhavaram, Chennai-600 060 at the back-side road of the subject building property, had not been constructed by obtaining planing permission and thereby the petitioner's house is an unauthorised building. Further, the respondents 1 and 2 have not illegally sanctioned the plan merely on the statement of the third respondent, and not misled by the alleged fraud of the third respondent.

9. In support of her submissions, the learned counsel for the respondents 1 and 2 relied on a decision of a Division Bench of this Court in W.P.No.6457 of 2009, dated 01.12.2009, reported in CDJ 2009 MHC 5636 (T.Sathya Murthy Vs. The Commissioner, Town and Country Planning Department and others), relevant portion of the same reads as follows:

"20. Taking into consideration the aforesaid facts, the question is whether it is desirable to grant the relief as sought for by the petitioner by directing the respondents to demolish the building.

21. Section 56 of the Town and Country Planning Act deals with the power to require removal of unauthorised development, where any development of land or building has been carried out without permission required under the Act or in contravention of any permission, etc. For that, notice is required to be given to the parties along with the particulars and purpose, as specified in Sub-section (2) to Section 56. Any person aggrieved by such notice within a specified period may apply for permission under Section 49 for retention of the land or building, as evident from Sub-section (3) to Section 56, and quoted hereunder:

"Section 56: Power to require removal of unauthorised development--

(1) where any development of land or building has been carried out--

(a) without permission required under this Act; or

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land or building has been duly revoked; or

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may, within three years of such development, serve on the owner, a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice--

(i) in cases specified in clause (a) or (c) above, to restore the land to its condition before the said development took place;

(ii) in cases specified in clause (b) or (d) above, to secure compliance with the permission or with the conditions of the permission, as the case may be.

(2) In particular, any such notice may, for the purposes aforesaid, require--

(i) the demolition or alteration of any building or works;

(ii) the carrying out on land, of any building or other operations;

(iii) the discontinuance of any use of land or building:

Provided that, in case the notice

requires the discontinuance of any use of land or building, the appropriate planning authority shall serve a notice on the occupier also.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 49 for the retention of the land, or any buildings or works or for the continuance of any use of the land or building to which the notice relates."

22. Thus, it is always open for the respondents 6 and 7 even to ask for post-facto approval, if notice would have been issued under Section 56(1) of the Tamil Nadu Town and Country Planning Act, 1971. In the present case, as the approval has been granted by the Town and Country Planning Department, the question of demolition of the building at this stage does not arise. However, the respondents 6 and 7 are required to comply with the conditions as stipulated by the State Level Environment Impact Assessment Authority (E.I.A), by order dated 13.10.2009 and the orders passed by the other authorities."

10. It is further contended by the learned counsel for the respondents 1 and 2, when notice was issued, the third respondent has to stop further construction and thereafter, on an application and check list report, dated 25.01.2019, planning permission, dated 26.02.2019 was given to the third respondent. Since there is no violation of the building norms, the ex-post-facto approval was given to the third respondent. Thus, the learned counsel for the respondents 1 and 2 prayed for dismissal of the Writ Petition.

11. By filing counter affidavit, the learned counsel appearing for the third respondent stated that the third respondent never encroached any public place as alleged by the petitioner and got approval from the authority on 26.02.2019 and has completed the construction activities in the month of May 2019. The nature of construction is only residential. The house

is ready for house warming ceremony. On the other hand, it is the writ petitioner who has constructed the building without obtaining planning permission from the respondents 1 and 2 and her house is an unauthorised building. Therefore, the respondents 1 and 2/Corporation of Chennai has to take necessary action only against the petitioner for removal of illegal and unauthorised constructions in violation of the Town Planning Rules and Regulations. Only due to personal vengeance and enmity, the present Writ Petition has been filed by the petitioner against the third respondent as a grudge in respect of the criminal case. The first respondent had already inspected the property in dispute and filed a detailed report by stating that there is no encroachment made by the third respondent in the 8 feet common passage as alleged by the petitioner herein. The first respondent has already filed a block map and survey land registers. In such circumstances, the allegations made by the petitioner against the third respondent's building plan approval issued by the local planning authorities, are not justified. Hence, the third respondent prayed for dismissal of the Writ Petition.

12. Keeping the above submissions in mind, we have carefully perused the materials available on record.

13. The factual aspects of the case is that originally, the construction was made by the third respondent without obtaining planning approval and hence, notice was issued. Immediately, he stopped construction and thereafter, obtained planning permission by ex-post-facto approval. Since the initial construction made by the third respondent is without the approval of the building plan, the petitioner has filed the present Writ Petition challenging the ex-post-facto approval granted to the third respondent. The above said judgment of the Division Bench of this Court in W.P.No.6457 of 2009 extracted supra, is the fitting answer to the petitioner's grievance against the third respondent.

14. It is stated that the petitioner has constructed her house where she is presently residing and the planning approval has been granted by the authorities concerned. Further, based on the ratio laid down by the Division Bench in the said case, there is no illegality in granting ex-post-facto approval when there is absolutely no violation of the building Rules. Further, from the statement made by the learned counsel for the respondents 1 and 2/Corporation of Chennai, we also understand that there is no encroachment in the public pathway.

15. Further, though the learned counsel for the petitioner has relied on the judgments of the Courts, the same are distinguishable on facts and hence, they are not discussed hereunder.

16. Thus, we do not find any merit in the present Writ Petition, which is accordingly dismissed. If the petitioner has any other grievance with regard to the construction of the building in question by the third respondent, she has to approach only the appropriate authority. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Commissioner,
Corporation of Greater Chennai,
Ripon Buildings,
Chennai-600 002.

2. The Assistant Engineer,
Division 30, Zone-III,
Corporation of Greater Chennai,
Madhavaram, Chennai-600 060.

+1cc to Mrs.Karthika Ashok, Advocate, S.R.No.15392

+1cc to Mr.Govind Chandrasekhar, Advocate, S.R.No.15706

+1cc to Mr.K.Balu, Advocate, S.R.No.15251

W.P.No.31075 of 2019

PPA(CO)
CS/29/05/2020

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